

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD TERRY,

Defendant-Appellant.

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UNPUBLISHED

June 23, 2005

No. 252554

Oakland Circuit Court

LC No. 03-189994-FC

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant was convicted of four counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a), for acts against two of his daughters. He was sentenced as a habitual offender, MCL 769.11, to thirty-five to sixty years’ imprisonment. Defendant appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court erred in allowing the victim’s foster care mother to testify regarding statements that the six-year-old victim made to the foster care mother under the tender years exception to the hearsay rule, MRE 803A. A trial court’s decision to admit hearsay evidence under an exception is reviewed for an abuse of discretion. *People v Geno*, 261 Mich App 624, 631-632; 683 NW2d 687, lv den 471 Mich 926; 688 NW2d 829 (2004); reh den 471 Mich 958; 691 NW2d 453 (2005).

Defendant objects to statements made by the five-year-old daughter of the victim’s foster care worker. Prompted by strange sexual behavior by the victim, the foster mother inquired where the young girl had learned about certain sexual acts. The victim responded that “her daddy showed her.” The victim went on to state to the foster mother that the defendant touched her in her vaginal area. Defendant objected contending that the testimony was hearsay and did not properly fit within a specified exception. The State argued that the statements were an exception to the hearsay rule under the tender years exception, being MRE 803A.

In this case we hold that the testimony was properly admitted under MRE 803A. The declarant was six-years-old at the time she made the statements. The statements corroborated the victim’s testimony at trial. Additionally, the statements were spontaneous. The foster care mother did not ask leading questions and did not expect the victim to say that defendant was abusive. Further, although there was a delay between the alleged abuse and the victim’s

reporting of the abuse, such a delay was excusable in light of the victim's young age and her relationship with her father. See *People v Dunham*, 220 Mich App 268, 272; 559 NW2d 360 (1996).

Defendant next argues that the trial court erred in denying his motion for directed verdict with respect to the allegations of sexual abuse against the six-year-old victim. This Court reviews de novo a trial court's decision on a motion for a directed verdict to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001), lv den 465 Mich 949; 640 NW2d 872 (2002). Review of the trial indicated that the victim testified that she remembered a time that defendant touched her and it did not feel good. She testified that the experience was a "bad thing." While the young victim could not remember how old she was at the time, she could recall that defendant "touched the bad touch," and that the defendant touched her "privates," with his hands. She further testified that the defendant reached underneath her clothes and put his fingers inside her. She was also able to testify that this had occurred on more than one occasion. While the victim could not say exactly how many times it happened, she was able to state that it happened "a lot of times." She also recounted how defendant would touch her "butt" with his hands. The victim remembered that she was in her room when defendant put his fingers in her privates and she also remembered that it hurt. In viewing the evidence in the light most favorable to the prosecution, the jury could find the essential elements of the crime charged beyond a reasonable doubt. There was ample evidence presented at trial for the jury to find defendant guilty beyond a reasonable doubt. Therefore, the trial court properly denied defendant's motion for a directed verdict. The victim's testimony, if believed, established the elements of the crime of first-degree criminal sexual conduct, MCL 750.520b(1)(a). See MCL 750.520a(o). The trial court correctly stated that the issue of credibility was for the jury to decide. *People v Peña*, 224 Mich App 650, 659; 569 NW2d 871 (1997), mod in part on other grounds 457 Mich 885; 586 NW2d 925 (1998).

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello